

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**FAO-3945-2016 (O&M)**

**Date of decision : May 19, 2022**

**Union of India**

**.....Appellant**

**Versus**

**M/s D.P. Chopra and others**

**....Respondents**

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Puneet Jindal, Senior Advocate with  
Mr. Amandeep Singh Meho, Advocate and  
Mr. Alok Kumar Jain, Advocate for the appellant.

Mr. Jatin Sehgal, Advocate,  
Mr. R.D. Gupta, Advocate,  
Ms. Devna Soni, Advocate and  
Mr. Aashish Garg, Advocate for the respondent.

\*\*\*

**LISA GILL, J.**

This appeal has been filed by Union of India through Sr. D.E.N. II, Ferozepur Northern Railway, Ferozepur challenging order dated 29.01.2016 passed by the learned Additional District Judge, Ferozepur as well as award dated 29.01.2014 passed by the learned Arbitral Tribunal. Challenge is confined primarily to the award under Claims No. 1 and 2 raised by the respondent.

Brief facts necessary for adjudication of the matter are that tenders for works in question i.e. '03 Road under Bridges (RUB's) by Box Pushing Technique in replacement of L-Xing No. C-80 on ASR-PTK Section No. C-50 and C-52 on PTK-JAT Section', were notified on 28.06.2002 by the appellant on the basis of approved drawings of three RUBs. The three works were awarded to the respondent – claimant on 08.11.2002 vide acceptance letter at a cost of

Rs.1,82,67,138/- with specified completion period of eighteen months. The contracted work was for H.T. construction at three different locations. Contract/ agreement dated 29.05.2003 was executed between the parties. Drawings of RUB at C-50 were modified vide communication dated 19.11.2003 approximately one year after award of the contract. Scope of the work was changed. Extension was afforded by the appellant without levy of any penalty etc. Dispute arose between the parties and the General Manager Northern Railway constituted Arbitral Tribunal on 04.02.2009 with two co-Arbitrators and one Presiding Arbitrator, all of them being officials of Northern Railway. Eight claims were raised by the respondent. A sum of Rs.31,22,479/- plus future interest at the rate of 15% per annum was awarded to the respondent. Summary of the description of the claim, amount claimed and the amount awarded as detailed in award dated 29.01.2014 reads as under:-

**Summary of Claims:-**

| Sr. No. | Description of Claim                                                 | Amount Claimed                                           | Amount Awarded |
|---------|----------------------------------------------------------------------|----------------------------------------------------------|----------------|
| 1.      | Idling charges of staff, labour and machines                         | Rs.36,53,407/-                                           | Rs.7,03,680/-  |
| 2.      | Price Escalation                                                     | Rs.12,41,990/- + the Escalation worked out by PV Clause. | Rs.20,65,500/- |
| 3.      | Extra Rates for Box Pushing for RUB at C-50                          | Rs.3,53,299/-                                            | Rs.3,53,299/-  |
| 4.      | Damages on payment withheld                                          | Rs.3,64,524/-                                            | NIL            |
| 5.      | Interest on payment withheld of Final Bill and SD                    | @15% on final bill and SD till actual date of payment.   | NIL            |
| 6.      | Loss of opportunity                                                  | Rs.11,16,500/-                                           | NIL            |
| 7.      | Damages on sum due from the date of payment due till date of payment | @15% on claim No. 1 to 6                                 | NIL            |
| 8.      | Cost of litigation                                                   | Rs.3,00,000/-                                            | NIL            |
|         | TOTAL                                                                | Rs.70,29,630/-+ Price escalation as                      |                |

Learned counsel for the appellant, at the outset, stated that the dispute is in regard to Claim Nos. 1 and 2 as awarded. Learned Arbitral Tribunal in respect to claim No. 1 i.e. idling charges of staff, labour and machines awarded a sum of Rs.7,03,680/- instead of Rs.36,53,407/- as claimed. It is specifically observed that approved drawings of RUB at level crossing C-50 was given to the claimant alongwith Letter of Approval (LOA) on 08.11.2002. Appellant subsequently modified drawings, which were given to the claimant on 19.11.2003 duly increasing/modifying the scope of work. It is further observed that approved drawings given for RUB to be constructed at level crossing C-80 was followed with some minor variation and the work was completed on 21.10.2003. After considering the documents, paid vouchers and hire agreements etc. produced by the claimant as proof of payment of wages to the labours and for hiring of machinery, learned Arbitral Tribunal awarded the amount in question. In respect to claim No. 2, learned Arbitral Tribunal referred to the guidelines laid down by the appellant themselves as per the Contract Policy dated 08.03.2004 wherein it is laid down that the price variation clause should be applicable only to those contracts where the stipulated period of completion is more than one year. Note was also made of abnormal hike in the prices of steel during the period in which respondents revised the drawings of RUB at level crossing C-50. In this view of the matter, a sum of Rs.20,65,500/- was awarded at the rate of 3% per annum of the completed contract value as price escalation qua claim No. 2. Learned Arbitral Tribunal has observed that completion of work which was otherwise to be completed within 18 months, was completed within extended period only on account of modification of drawings by the appellant, therefore, no fault would lie at the door of the claimant. It is in this view of the matter that a sum of

Rs.7,03,680/- has been awarded on account of idling charges of staff, labour and machines i.e. claim No.1.

Aggrieved therefrom, petition under Section 34 was filed by the appellants, which was dismissed by the learned Additional District Judge, Ferozepur vide impugned order dated 29.01.2016. Learned Additional District Judge observed that extension was afforded six times to the claimant by the appellants themselves and drawings were revised alongwith steep hike in prices of steel, therefore, price escalation at the rate of 3% per annum for the complete contract value was found to be justified. Appellant being aggrieved therefrom, has filed the present appeal challenging order dated 29.01.2016 passed by the learned Additional District Judge, Ferozepur as well as award dated 29.01.2014 passed by the Arbitral Tribunal insofar as claim Nos. 1 and 2 are concerned.

Learned counsel for the appellant submitted that learned Arbitral Tribunal has travelled beyond the terms and conditions of the Contract while awarding the amount under the said two claims. Learned counsel refers to clause 14.3 of the Contract, which provides that no claim for idle labour and/or idle machinery etc. on any account shall be entertained for business loss or any such loss. It was further submitted that learned Tribunal has raised a presumption of applicability of price escalation clause, which is conspicuous by its absence in the tender document as well as Contract executed between the parties. Observation of the learned Tribunal that it was of the view that price escalation clause should have been a part of the contract, clearly shows that the learned Tribunal has acted beyond the terms and conditions of the contract, therefore, vitiating the award.

Learned counsel for the appellant submitted that tender price in fact incorporates the factor of price escalation, if any. Respondent – Contractor it was urged had submitted his bid being conscious of the absence of price escalation clause in the Contract. Moreover, reliance by learned Arbitral Tribunal on the

policy/guidelines dated 08.03.2004, which are admittedly subsequent to the Contract, is clearly misplaced. It was further contended that each time, extension for completion of work was afforded, respondent – Contractor except for the first time had given in writing that it would not claim any enhancement of price due to delay in completion of work. This fact, it is submitted, has been wrongly ignored by the learned Tribunal. Learned counsel for the appellant, thus, submitted that patent illegality is apparent on the face of it, therefore, award dated 29.01.2014 should be set aside. Learned Additional District Judge, it was submitted has wrongly held that no ground under Section 34 of the Arbitration and Conciliation Act, 1996 is made out in the present case. It was, thus, prayed that this appeal be allowed.

Per contra learned counsel for the respondent submitted that learned Tribunal as well as learned Additional District Judge have proceeded correctly in accordance with the provisions of law. It is submitted that alleged work could not be completed within the stipulated period solely due to act of the appellant. Revised plans were admittedly given to the respondent – claimant increasing/modifying the scope of work, therefore, respondent cannot be penalised for the same. Learned counsel for the respondent submits that clause 14 regarding idling charges, in any case, does not disentitle the respondent from claiming damages to which he is otherwise entitled to under the law. Moreover, the Arbitral Tribunal, it is stated, has awarded only a pittance of what was claimed i.e. Rs.7,03,680/- instead of Rs.36,53,407/- qua claim No. 1. Furthermore clause regarding idling for the period within eighteen months may be justified but in the given facts and circumstances it cannot be said that Arbitral Tribunal has committed any illegality or has acted beyond the scope of the contract.

In respect to claim No. 2 i.e. price escalation clause, it is contended that learned Tribunal has duly considered guidelines dated 08.03.2004 wherein it

is specifically directed that price variation clause should be made applicable to contracts valuing Rs.10 lakhs and above and that said provisions should be made applicable to all contracts entered into on or after 01.04.1987. Learned counsel for the respondent refers to clause 4 of the Contract to submit that parties to the contract would be bound by the guidelines in question. Once the said mandate was there by the Department itself, it was submitted that it is not open for the Department to take a stand that these guidelines would not be applicable as they had been issued subsequent to the contract in question. Reference is also made to Ex.R22 issued by the Ministry of Railways to the General Manager, N.F. Railway, Maligaon Gauhati. Moreover, Arbitral Tribunal, comprising of arbitrators, none other than officials of Northern Railways itself, has passed the award after taking into consideration the entire evidence and documents placed before it by the parties. Appellant, it is stated, has failed to place on record anything to the contrary or any document to indicate that the claim set forth by the respondent is unjustified.

At this stage, learned counsel for the respondent has referred to memo dated 20.01.1987 issued by the Government of India, Ministry of Railways regarding General Conditions of Contract - Price Variation Clause, Exhibit R26 before the Arbitrator, wherein it is stated that Railway Board had nominated a Committee comprising of Railway Officers to make an indepth study of the existing price variation clauses of General conditions of Contract. Board, it is stated, in partial modification of the existing instructions had made certain decisions, which are detailed therein. Relevant for the purpose of the present case would be clause 2 (ii) and 2(iii) which states that price variation clause should be applicable only qua the contracts where stipulated period of completion is more than one year and that price variation clause should be applicable to contracts of

the value of Rs.10 lakhs and above. It is, thus, prayed that this appeal be dismissed.

Heard learned counsel for the parties and have gone through the file with their able assistance.

At the very outset, it is necessary to mention that scope of interference by this Court in Arbitral award passed under the Arbitration Act is limited. It is a settled position that this Court does not sit in appeal over an award passed by the learned Arbitral Tribunal. Even though a different view may be possible in a given factual matrix, Court shall not interfere until and unless it is shown that award passed by the Arbitrator/Arbitral Tribunal suffers from perversity or error of law or that the Arbitrator has mis-conducted himself. These principals have been reiterated by the Hon'ble Supreme Court in **NTPC Ltd. versus M/s Deconar Services Pvt. Ltd. 2021 AIR (Supreme Court) 2588**. Hon'ble Supreme Court in the case of **NTPC Ltd.** (supra) has further held that to merely show existence of another reasonable interpretation or view on the basis of material on the record is not sufficient to allow for interference.

In the present case, allotment of work to the respondent along with factual aspect of extensions of time for completion of work besides arising of dispute between the parties, appointment of Arbitral Tribunal and passing of award dated 29.01.2014 and order dated 29.01.2016 are not in dispute. Appellant challenged the award primarily on the ground that claim No. 1 and claim No. 2 has been incorrectly dealt with by the Arbitral Tribunal and the amount awarded by going beyond the terms and conditions of the Contract. In respect to claim No. 1, learned counsel for the appellant had argued that first and foremost, no quantification has been carried out by the Arbitral Tribunal and moreover, there is a specific negative covenant in the contract i.e. Clause 14.3, explicitly denying any claim for idling charges for staff, labour or machinery. It is to be noted that it

is the case of the respondent that it had mobilised its staff and other resources etc. on the site in January, 2003 itself. However, modification in the drawing was carried out on 19.11.2003 duly increasing/modifying the scope of work.

It is a matter of record that work for construction of 3 RUBs was allotted to the respondent. It is specifically noted by the Arbitral Tribunal that work for RUB at level crossing C-80 was followed with some minor variation and there was some delay on the part of the appellant for arranging road block but work was completed on 21.10.2003 and work at RUB C-52 was also simultaneously completed on 27.11.2003. Approved drawing for RUB at level crossing C50 was allotted to the claimant on 08.11.2002. Drawings were, however, subsequently modified on 19.11.2003. It is specifically observed by the Arbitral Tribunal that the claimant submitted attested copies of paid vouchers and hire agreements as proof of payment of wages to the labour and for hiring of machinery respectively i.e. CD-V. It is further observed that appellant could not produce any site Registers maintained at the site of work despite many reminders by the Arbitral Tribunal. Out of the claimed amount of Rs.36,53,407/- sum of Rs.7,03,680/- only has been awarded, which is clearly on the basis of documents produced by the respondent. Therefore, it cannot be said that there is no quantification carried out by the Arbitral Tribunal. This figure was not arrived at in the air. Learned Additional District Judge has also considered this aspect and clearly observed that as work was in progress qua the other two RUB's a part of the same work force and machinery would have been utilized thereto, therefore, Arbitral Tribunal awarded only 20% of the sum claimed.

Much stress has been laid by learned counsel for the appellant on Clause 14.3 of the Contract which provides that no claim for idle labour etc. shall be entertained and Clause 10.1 which provides that Engineer on behalf of Railway shall be entitled by order in writing to enlarge or extend, diminish or reduce the

work or make any alterations in their design, character etc. or order any additional work to be done or not to be done and the contractor will not be entitled to any compensation or any increase/reduction in quantities of work but will only be paid for the actual amount of work done and for approved materials supplied against the specific orders as well as Clause 26.2 of the Contract which states that no claim of any kind whatsoever will be entertained if execution of work is held up or delayed for want of approved plans and drawings or changes in the same or delay in supply of materials to be arranged by the Railway or delay in acquisition of land. It is relevant to note that when respondent – claimant submitted tender, at best it would be expected to take into account price escalation for the period of Contract itself and not for any extensions which may occur. It is to be noticed that though no argument had been raised by the appellant before the appellant learned Additional District Judge regarding Clauses 10.1 and 26.2 as raised before this Court, in my considered opinion in the given circumstances where the appellants themselves have modified the drawings leading to enhancement/enlargement of the work in question with the authorities taking due note of steep escalation in the price of steel as is evident on record, it is apparent that Section 23 of the Indian Contract Act would come into play as is urged by learned counsel for the respondent.

At this stage, it is gainful to refer to decision of the High Court of Delhi in **Simplex Concrete Piles (India) Ltd. v. Union of India (2010) ILR 2 Delhi 699**, wherein it was held that contractual clauses which prohibit the entitlement to rightful damages of a person are clearly hit and are void of Section 23 of the Contract Act. It has been held that it is a matter of public policy and public interest that sanctity of contracts are preserved. To permit the contractual clause having the object to defeat the very contract itself, is a matter of grave public interest. If such a clause is allowed to stand, then, the same will defeat the

very basis of existence of Contract Act. While referring to the judgment of the Hon'ble Supreme Court in **Ramnath International Construction (P) Ltd. Versus Union of India (2007) 2 SCC 453** and **Asia Techs Limited versus Union of India and others (2009) 10 SCC 354**, it was observed that basis of decision was that contractual clauses, which prohibit entitlement to rightful damages towards a person are clearly hit and are void of Section 23 of the Contract Act. This decision has been followed in a subsequent decision of the Delhi High Court in **Ircon International Limited versus GPR-Rahee JV 2022 SCC Online Delhi 839**.

Learned counsel for the appellant was unable to deny that the Arbitral Tribunal has considered all these aspects before passing the award. Hon'ble Supreme Court in the case of **NTPC Ltd.** (supra) while considering the issue of grant of escalation charges for the work done beyond the scheduled period of contract, observed that:-

“ Any decision regarding the issue of whether an arbitrator can award a particular claim or not, will revolve on the construction of the contract in that case, the evidence placed before the arbitrator and other facts and circumstances of the case. No general principle can be evolved as to whether some claim can be granted or not.”

In the case of **NTPC Ltd.** (supra), escalation charges as awarded by the Arbitrator were upheld. In the given facts and circumstances of the present case, learned counsel for the appellant is unable to show how the view taken by the Arbitral Tribunal is not plausible or suffers from any perversity or error of law or that the Tribunal has mis-conducted itself in any manner. Learned counsel for the appellant is unable to point out anything from the file to indicate that such a view is so unreasonable or unconscionable which calls for interference by this

Court. As noted in the foregoing para, this Court is not to deal with the matter as a Court of Appeal.

Arbitral Tribunal has succinctly dealt with the issue sought to be raised by the appellant under claim No. 1 as well as claim No. 2. Learned counsel for the appellant is unable to point out any patent illegality, which would vitiate the award, neither can it be said that Arbitral Award has acted beyond terms and conditions of the Contract.

Learned counsel for the appellant is unable to point out any illegality or infirmity in order dated 29.01.2016 passed by the learned Additional District Judge, Ferozepur as well as award dated 29.01.2014 passed by the learned Arbitral Tribunal.

No other argument has been addressed.

Appeal is, accordingly, dismissed with no order as to costs.

Pending applications, if any, are accordingly, disposed of.

**May 19, 2022**  
rts

**(LISA GILL)**  
**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No